

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BARTON RAY GAINES, §
Petitioner, §
VS. § CIVIL ACTION NO. 4:06-CV-409-Y
§
NATHANIEL QUARTERMAN, §
Director, T.D.C.J. §
Correctional Institutions Div., §
Respondent. §

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2254 of petitioner Barton Ray Gaines, along with the October 20, 2006, findings, conclusions, and recommendation of the United States magistrate judge. The magistrate judge gave the parties until November 10 to file written objections to the findings, conclusions, and recommendation. As of the date of this order, no written objections have been filed.

The Court has reviewed the pleadings and the record in this case, and has reviewed for clear error the proposed findings, conclusions and recommendation of the United States magistrate judge filed on October 20, 2006. The Court concludes that the petition for writ of habeas corpus should be dismissed for the reasons stated in the magistrate judge's findings and conclusions.

Therefore, the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

Respondent Quarterman's October 9, 2006, motion to dismiss [docket no. 14] is GRANTED.

Barton Ray Gaines's petition for writ of habeas corpus under 28 U.S.C. § 254 is DISMISSED WITHOUT PREJUDICE, except as to any

application of the federal statute of limitations or other federal procedural bar that may apply.¹

SIGNED November 16, 2006.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

¹A one-year statute of limitations is now applicable to the filing of non-capital § 2254 habeas corpus petitions in federal court. See 28 U.S.C.A. § 2244(d)(1-4)(West Supp. 2006). The statute of limitations is tolled, however, while a properly filed application for state post-conviction or other collateral review is pending. 28 U.S.C.A. § 2244(d)(2)(West Supp. 2006).